

United States Postal Service

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22201–3078, or such other place as may be designated by the presiding officer.

[52 FR 29012, Aug. 5, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

§ 965.9 Evidence.

(a) In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(b) Testimony shall be given under oath or affirmation and witnesses are subject to cross-examination.

(c) Agreed statements to fact are encouraged and may be received in evidence.

§ 965.10 Transcript.

Testimony and argument at hearings shall be reported verbatim, unless the presiding officer otherwise orders. Transcripts or copies of the proceedings are supplied to the parties at such rate as may be fixed by contract between the reporter and Postal Service.

§ 965.11 Initial decision.

The presiding officer shall render an initial decision in writing, based on the record, as expeditiously as possible, but to the extent practicable within 10 working days of closing of the record. The decision will be brief, containing summary findings of fact, conclusions of law, and reasons therefor. If there has been a hearing the presiding officer may in his discretion render an oral decision. A typed copy of such oral decision will subsequently be furnished to the parties to establish the date for commencement of time for requesting review of the initial decision.

§ 965.12 Appeal.

The initial or tentative decision will become final 10 days after its issuance and receipt by the parties unless the Judicial Officer, or by delegation the Associate Judicial Officer, in his sole discretion, grants review upon appeal of either party filed within that period, or on his own motion within that period. If an appeal is denied, the initial

or tentative decision becomes the final agency decision on the issuance of such denial. The judicial Officer's decision on appeal is the final agency decision with no further agency review or appeal rights.

§ 965.13 Compromise and informal disposition.

Nothing in these rules precludes the compromise, settlement, and informal disposition of proceedings initiated under these rules at any time prior to the issuance of the final agency decision.

§ 965.14 Public Information.

The Librarian of the Postal Service maintains for public inspection in the Library copies of all initial, tentative, and final agency decisions and orders. The Recorder maintains the complete official record of every proceeding.

[52 FR 29012, Aug. 5, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

PART 966—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO ADMINISTRATIVE OFFSETS INITIATED AGAINST FORMER EMPLOYEES OF THE POSTAL SERVICE

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AUTHORITY: 39 U.S.C. 204, 401, 2601.

SOURCE: 62 FR 63279, Nov. 28, 1997, unless otherwise noted.

§ 966.1 Authority for rules.

These rules of practice are issued by the Judicial Officer pursuant to authority delegated by the Postmaster General.

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§ 966.2 Scope of rules.

The rules in this part apply to any petition filed by a former postal employee:

(a) To challenge the Postal Service's determination that he or she is liable to the Postal Service for a debt incurred in connection with his or her Postal Service employment; and/or

(b) To challenge the administrative offset schedule proposed by the Postal Service for collecting any such debt.

§ 966.3 Definitions.

(a) *Administrative offset* refers to the withholding of money payable by the Postal Service or the United States to, or held by the Postal Service or the United States for, a former employee in order to satisfy a debt determined to be owed by the former employee to the Postal Service.

(b) *Debt* refers to any amount determined by the Postal Service to be owed to the Postal Service by a former employee.

(c) *Former employee* refers to an individual whose employment with the Postal Service has ceased. An employee is considered formally separated from the Postal Service rolls as of close of business on the effective date of his or her separation. Postal Service Form 50.

(d) *General Counsel* refers to the General Counsel of the Postal Service, and includes a designated representative.

(e) *Hearing Official* refers to an Administrative Law Judge qualified to hear cases under the Administrative Procedure Act, an Administrative Judge appointed under the Contract Disputes Act of 1978, or any other qualified person licensed to practice law designated by the Judicial Officer to preside over a hearing conducted pursuant to this part.

(f) *Judicial Officer* refers to the Judicial Officer, Associate Judicial Officer, or Acting Judicial Officer of the Postal Service.

(g) *Postmaster/Installation Head* refers to the top management official at a particular post office or installation when an alleged debt owed by a former employee was incurred, or to that official's successor, or to the department head who had general supervisory responsibility for a former employee at

Area Offices or National Headquarters when an alleged debt owed by that former employee was incurred, or to that official's successor. Where the former employee was a Postmaster/Installation Head, the term refers to the official to whom the Postmaster/Installation Head reported when an alleged debt owed by that former employee was incurred, or to that official's successor. Where the former employee was in the Inspection Service, the term refers to the former employee's immediate supervisor when an alleged debt owed by that former employee was incurred, or to that official's successor. Where the former employee was in the Office of Inspector General, the term refers to the Inspector General, or to the Inspector General's delegate.

(h) *Reconsideration* refers to the review of an alleged debt and/or the proposed offset schedule conducted by the Postmaster/Installation Head at the request of a former employee alleged to be indebted to the Postal Service.

(i) *Recorder* refers to the Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078.

[62 FR 63279, Nov. 28, 1997, as amended at 63 FR 66053, Dec. 1, 1998]

§ 966.4 Petition for a hearing and supplement to petition.

(a) A former employee who is alleged to be responsible for a debt to the Postal Service may petition for a hearing under this part, provided:

(1) Liability for the debt and/or the proposed offset schedule has not been established under Part 452.3 or Part 462.3 of the Employee & Labor Relations Manual;

(2) He or she has received a Notice from the Minneapolis Accounting Service Center (or its successor installation) informing him or her of the debt and an offset schedule to satisfy the debt and of the right to request reconsideration by the Postmaster/Installation Head; and

(3) He or she has requested and received reconsideration of the existence or amount of the alleged debt and/or the offset schedule proposed by the Postal Service.

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(b) Within thirty (30) calendar days after the date of receipt of the Postmaster/Installation Head's written decision upon reconsideration, the former employee must file a written, signed petition, requesting a written or oral hearing, with the Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078.

(c) The petition must include the following:

(1) The words, "Petition for Review Under 39 CFR Part 966";

(2) The former employee's name and social security number;

(3) The former employee's home address and telephone number, and any other address and telephone number at which the former employee may be contacted about these proceedings;

(4) A statement of the date the former employee received the Postmaster/Installation Head's written decision upon reconsideration of the alleged debt, and a copy of the decision;

(5) A statement indicating whether the former employee requests an oral hearing or a decision based solely on written submissions;

(6) If the former employee requests an oral hearing, a statement describing the evidence he or she will produce which makes an oral hearing necessary, including a list of witnesses, with their addresses, whom the former employee expects to call; a summary of the testimony the witnesses are expected to present; the city requested for the hearing site, with justification for holding the hearing in that city; and at least three proposed dates for the hearing at least forty-five (45) days after the filing of the petition;

(7) A statement of the grounds upon which the former employee objects to the Postal Service's determination of the debt or to the administrative offset schedule proposed by the Postal Service for collecting any such debt. This statement should identify with reasonable specificity and brevity the facts, evidence, and legal arguments, if any, which support the former employee's position; and

(8) Copies of all records in the former employee's possession which relate to the debt and which the former em-

ployee may enter into the record of the hearing.

(d) The former employee may, if necessary, file with the Recorder additional information as a supplement to the petition at any time prior to the filing of the answer to the petition under § 966.7, or at such later time as permitted by the Hearing Official upon a showing of good cause.

[62 FR 63279, Nov. 28, 1997, as amended at 63 FR 66053, Dec. 1, 1998]

§ 966.5 Effect of petition filing.

Upon receipt and docketing of the former employee's petition, the Recorder will notify the General Counsel that the petition has been filed and that a timely filed petition stays further collection action.

§ 966.6 Filing, docketing and serving documents; computation of time; representation of parties.

(a) *Filing.* All documents required under this part must be filed by the former employee or the General Counsel in triplicate with the Recorder. (Normal Recorder office business hours are between 8:15 a.m. and 4:45 p.m., eastern standard or daylight saving time as appropriate during the year.) The Recorder will transmit a copy of each document filed to the other party, and the original to the Hearing Official.

(b) *Docketing.* The Recorder will maintain a docket record of proceedings under this part and will assign each petition a docket number. After notification of the docket number, the former employee and General Counsel should refer to it on any further filings regarding the petition.

(c) *Time computation.* A filing period under the rules in this part excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day.

(d) *Representation of parties.* After the filing of the petition, further document transmittals for, or communications with, the Postal Service shall be through its representative, the General Counsel. If a former employee is represented by an attorney authorized to

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practice law in any of the United States or the District of Columbia or a territory of the United States, further transmissions of documents and other communications with the former employee shall be made through his or her attorney rather than directly with the former employee.

§ 966.7 Answer to petition.

Within thirty (30) days after the date of receipt of the petition, the General Counsel shall file an answer to the petition, and attach all available relevant records and documents in support of the Postal Service's claim, or the administrative offset schedule proposed by the Postal Service for collecting any such claim; a statement of whether the Postal Service concurs in, or objects to, an oral hearing, if the former employee requests one, with the reason(s) for the Postal Service's objection; a list of witnesses the Postal Service intends to call if an oral hearing is requested and the request is granted; a synopsis of the testimony of each witness; a statement of concurrence or objection to the proposed location and dates for the oral hearing; and a statement of the basis for the determination of debt or offset schedule if not contained in the relevant records or documents. If the former employee files a supplement to the petition, the General Counsel may file any supplemental answer and records to support the position of the Postal Service within twenty (20) calendar days from the date of receipt of the supplement filed with the Recorder.

§ 966.8 Authority and responsibilities of Hearing Official or Judicial Officer.

(a) In processing a case under this part, the Hearing Official's authority includes, but is not limited to, the following:

- (1) Ruling on all offers, motions, or requests by the parties;
- (2) Issuing any notices, orders, or memoranda to the parties concerning the hearing procedures;
- (3) Conducting telephone conferences with the parties to expedite the proceedings (a memorandum of a telephone conference will be transmitted to both parties);

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(4) Determining if an oral hearing is necessary, the type of oral hearing that would be appropriate, and setting the place, date, and time for such hearing;

(5) Administering oaths or affirmations to witnesses;

(6) Conducting the hearing in a manner to maintain discipline and decorum while assuring that relevant, reliable, and probative evidence is elicited on the issues in dispute, and that irrelevant, immaterial, or repetitious evidence is excluded;

(7) Establishing the record in the case;

(8) Issuing an initial decision or one on remand; and

(9) Granting, at the request of either party, reasonable time extensions.

(b) The Judicial Officer, in addition to possessing such authority as is described elsewhere in this part, shall possess all of the authority and responsibilities of a Hearing Official.

§ 966.9 Opportunity for oral hearing.

An oral hearing generally will be held only in those cases which, in the opinion of the Hearing Official, cannot be resolved by a review of the documentary evidence, such as when the existence, or amount, of a debt turns on issues of credibility or veracity. An oral hearing includes an in-person hearing, a telephonic hearing, or a hearing by video conference. When the Hearing Official determines that an oral hearing is not necessary, the decision shall be based solely on written submissions.

§ 966.10 Initial decision.

(a) After the receipt of written submissions or after the conclusion of the hearing and the receipt of any post-hearing briefs, the Hearing Official shall issue a written initial decision, including findings of fact and conclusions of law, which the Hearing Official relied upon in determining whether the former employee is indebted to the Postal Service, or in upholding or revising the administrative offset schedule proposed by the Postal Service for collecting a former employee's debt. When the Judicial Officer presides at a hearing he or she shall issue a final or a tentative decision.

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(b) The Hearing Official shall promptly send to each party a copy of the initial or tentative decision, and a statement describing the right of appeal to the Judicial Officer in accordance with § 966.11.

§ 966.11 Appeal.

The initial or tentative decision will become final and an order to that effect will be issued by the Judicial Officer thirty (30) days after issuance and receipt by the parties of the initial or tentative decision unless the Judicial Officer, in his discretion, grants review upon appeal by either party, or on his own motion. If an appeal is denied, the initial or tentative decision becomes the final agency decision upon the issuance of such denial. The Judicial Officer's decision on appeal is the final agency decision with no further right of appeal within the agency.

§ 966.12 Waiver of rights.

The Hearing Official may determine the former employee has waived his or her right to a hearing and administra-

tive offset may be initiated if the former employee:

(a) Files a petition for hearing after the end of the prescribed thirty (30) day period, and fails to demonstrate to the satisfaction of the Hearing Official good cause for the delay;

(b) Has received notice to appear at an oral hearing but fails to do so without showing circumstances beyond the former employee's control;

(c) Fails to file required submissions or to comply with orders of the Hearing Official; or

(d) Files a withdrawal of his or her petition for a hearing with the Recorder.

§ 966.13 Ex parte communications.

Ex parte communications between a Hearing Official or his or her staff and a party shall not be made. This prohibition does not apply to procedural matters. A memorandum of any communication between the Hearing Official and a party will be transmitted to both parties.